

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

In re: :
BENNETT, CHARLOTTE, : Docket #22cv7846
Plaintiff, :
- against - :
CUOMO, et al., : New York, New York
February 26, 2024
Defendants. :
----- :

PROCEEDINGS BEFORE
THE HONORABLE SARAH L. CAVE,
UNITED STATES MAGISTRATE JUDGE

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None

E X H I B I T S

<u>Exhibit Number</u>	<u>Description</u>	<u>ID</u>	<u>In</u>	<u>Voir Dire</u>
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None

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2 THE COURT: Good afternoon, this is Magistrate
3 Judge Cave. We're here for a discovery conference in
4 Bennett v. Cuomo, case number 22cv7846. May I have the
5 appearances starting with Ms. Bennett please.

6 MS. LAURA SCHNELL: Good afternoon, Your Honor,
7 Laura Schnell and Herbert Eisenberg at Eisenberg &
8 Schnell and Rachel Green, Kayla Morin, and Sarah Nesbitt
9 at Katz, Bank, Kimmin for Ms. Bennett.

10 THE COURT: Okay, good afternoon. For Mr.
11 Cuomo.

12 MR. THERESA TRZASKOMA: Good afternoon, Your
13 Honor, Theresa Trzaskoma from Sher Tremonte on behalf of
14 former Governor Andrew M. Cuomo. I believe colleagues
15 and co-counsel on the line, and I'll let them state
16 their appearances.

17 THE COURT: Okay.

18 ATTORNEYS: Good afternoon --

19 (interposing)

20 MS. ALLEGRA NOONAN: Go ahead, Rachel

21 ATTORNEY: Go ahead, Allegra.

22 MS. NOONAN: Oh, thank you, yes, Your Honor,
23 good afternoon, this is Allegra Noonan from Sher
24 Tremonte LLP as well as on behalf of Governor Cuomo.
25 Thank you.

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2 THE COURT: Good afternoon.

3 MS. RITA GLAVIN: Good afternoon, Judge Cave,
4 it's Rita Glavin from Glavin PLLC on behalf of former
5 Governor Cuomo.

6 THE COURT: Good afternoon. For Ms. DeRosa.

7 MR. GREGORY MORVILLE: Good afternoon, Judge,
8 Gregory Morville from Morville PLLC Sarah Sulkowski from
9 Gelber Santillo on behalf of Ms. DeRosa.

10 THE COURT: Good afternoon. For Ms.
11 DesRosiers.

12 MR. JYOTIN HAMID: Good afternoon, Your Honor,
13 this is Jyo Hamid at Debevoise & Plimpton. I believe my
14 colleague Leah Rosenberg also of Debevoise is also on
15 the line for Ms. DesRosiers.

16 THE COURT: Okay, good afternoon. For Ms.
17 Mogul.

18 MS. JILL ROSENBERG: Good afternoon, Your
19 Honor, this is Jill Rosenberg from Orrick Herrington &
20 Sutcliffe, and with me is my colleague Brianna Messina
21 also from Orrick.

22 THE COURT: All right, good afternoon. For the
23 OAG.

24 MS. SERENA LONGLEY: Good afternoon, Your
25 Honor, this is Serena Longley here on behalf of the New

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2 York Attorney General's Office. I'm joined by some of
3 my colleagues as well as Anne Clark from Vladeck, Raskin
4 & Clark P.C. and Sara Sanchez from Cleary Gottlieb Steen
5 & Hamilton LLP.

6 THE COURT: Okay, good afternoon. Thank you
7 for joining us. For Ms. Boylan.

8 MS. DANYA PERRY: Good afternoon, Your Honor,
9 Julie Gerchik, Glaser Weil, and I believe on the line I
10 have my co-counsel Danya Perry and Krista Oehlke from
11 Perry Law.

12 THE COURT: Okay, good afternoon. Anyone else
13 I missed? Very good, thank you.

14 So we do have over 24 people on the line. So I
15 would ask if you're not speaking, to just make sure that
16 your line is muted. What we have to cover today are
17 updates as to the status of Ms. Boylan, compliance with
18 the Court's January 4 order, the anticipated motion to
19 compel as to Cleary and Vladeck, and then I also want at
20 the end to discuss scheduling oral argument regarding
21 Mr. Cuomo's motion to compel the OAG's subpoena and then
22 across the motion to quash. And then obviously anything
23 else that anyone wants to cover.

24 So if we could start with Ms. Boylan, I got a
25 letter from the parties last week that there were still

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2 a few outstanding issues as to search terms. Ms.

3 Schnell, can you - sorry, not Ms. Schnell - Ms.

4 Trzaskoma, can you start to tell me where we are?

5 MS. TRZASKOMA: Yes, I'm going to defer to my
6 colleague Ms. Noonan for this.

7 THE COURT: Okay. Go ahead, Ms. Noonan.

8 MS. NOONAN: Yes, good afternoon, Your Honor.

9 So we were able to reach agreement as of earlier today
10 with counsel for Ms. Boylan. We did negotiate over the
11 course of the past month, and we were negotiating both
12 the search terms applicable to this case as well as the
13 Trooper 1 case so that all the documents could be
14 collected at the same time. So that is where we stand.
15 And the only thing we would ask on behalf of Governor
16 Cuomo is, just given the timing and the length of the
17 processes thus far, that the Court set another
18 conference to check in on the progress of the actual
19 document collection and production because we're in
20 agreement on what is going to be reviewed, but that
21 review to my knowledge hasn't started yet. So we just
22 want to make sure that that stays on track.

23 THE COURT: All right, thank you. Ms. Gerchik
24 or Ms. Perry, can you speak to where we are on timing of
25 getting the search terms processed and review of

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2 production underway?

3 MS. GERCHIK: Yes, Your Honor, as counsel just
4 stated, we did reach agreement finally this morning
5 after a month of quite a few negotiations back and
6 forth. And so as we said in our confirmatory email
7 earlier today, we are now promoting the documents and
8 will begin our review tomorrow.

9 THE COURT: Okay, and, sorry, that was Ms.
10 Gerchik speaking?

11 MS. GERCHIK: Yes. Yes, Your Honor.

12 THE COURT: I just want to, trying to keep the
13 voices straight.

14 MS. GERCHIK: Yes.

15 THE COURT: So the search terms have already
16 been run, and it's just a review and production that
17 needs to happen?

18 MS. GERCHIK: So without getting too into the
19 weeds, some of the search terms, the ones that we did
20 not have agreement on way back when, we then came to
21 agreement about potential fixes, shall we say, and so we
22 ran those. We've gone back and forth, but, yes, the
23 review is what is going to start tomorrow.

24 THE COURT: Okay. Do you have enough as to the
25 time to complete the review of the production?

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2 MS. GERCHIK: Your Honor, at this time I don't.
3 I will say that where we are at that we will be
4 promoting 42,000 documents which is quite a sizeable
5 number. Regardless of (indiscernible) status, but here,
6 of course, we are talking about a non-party individual
7 witness. So we have - I'm sorry, we'll be promoting
8 more than that, I misspoke, 42,000 hits per the search
9 terms that we have agreed on as of this morning.

10 So I can't tell you an approximate time. I
11 could just tell you that we are going to be starting
12 tomorrow, and we will be reviewing diligently.

13 THE COURT: Okay, thank you. And then I
14 assume, Ms. Noonan, that you want to wait to have those
15 documents before we get Ms. Boylan's deposition which we
16 sort of tabled a couple of times?

17 MS. NOONAN: Your Honor, that would be correct,
18 and, again, this is Allegra Noonan. And we may be in
19 touch with counsel for Ms. Boylan to propose perhaps
20 focusing on prioritizing certain documents that are
21 maybe relevant to Ms. Bennett's deposition, but that's
22 something that we'll talk to her. We haven't talked
23 before this. But we, for Ms. Boylan's deposition, we'll
24 expect that the review is complete and we have the full
25 production of the documents, and then we'll speak with

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2 Ms. Boylan's counsel separately about getting the
3 documents that we know we need for Ms. Bennett's
4 deposition.

5 THE COURT: Okay, I understand. As I always
6 say to parties when I'm supervising discovery, we don't
7 need to have every single email in hand before we take a
8 deposition. Substantial completion is usually what we
9 aspired to. And given that the process of getting these
10 documents has been more protracted than I would've liked
11 through no fault of anyone's, it's just I'm a little
12 concerned that it took us two months to finalize search
13 terms. And so that does make me a little bit concerned
14 about how long the review might take. So I understand
15 Ms. Boylan is a non-party, but, unfortunately, she does
16 have documents that are relevant for the plaintiff's
17 deposition here. And so just remind me, Ms. Noonan,
18 have we set a date for Ms. Bennett's deposition as yet?

19 MS. NOONAN: There is a date set for Ms.
20 Bennett's deposition I believe, but I'll have my
21 colleagues chime in if I have that incorrectly, but I do
22 believe we have a date for her.

23 THE COURT: I'm guessing, Ms. Schnell, you
24 probably know that.

25 MS. SCHNELL: We have two days reserved, Your

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2 Honor. Let me see if I can - so the very end of March I
3 believe. Let me just quickly look for it. But yes, and
4 I was just on a call, a meet and confer this morning we
5 confirmed those dates. So, yes, we have a date. It's
6 the last week in March.

7 THE COURT: Well, what I would --

8 MS. SCHNELL: March 27 and 28, Your Honor.

9 THE COURT: Okay, great, thank you. What I
10 would strongly encourage you to do, Ms. Noonan, is to
11 get to Ms. Gerchik and her colleagues as soon as
12 possible like this week what are the most important
13 documents that you feel you really need for Ms.
14 Bennett's deposition so that we don't have to reschedule
15 that. Okay?

16 MS. GERCHIK: Absolutely, Your Honor, we'll be
17 in touch with them. We think we have an efficient plan
18 for that, but because we just haven't spoken to Ms.
19 Boylan's counsel yet, I don't want to represent it
20 without there being an agreement. But I'm confident we
21 can forge a path forward that makes sense.

22 THE COURT: All right, thank you. Anything
23 else with respect to Ms. Boylan's production that anyone
24 wants to raise? Okay, good. So, Ms. Gerchik, you're
25 welcome to stay. You don't have to. Other than, well,

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2 I guess you should stay because we need to, we'll set a
3 conference date. So I'm sorry, I think you do need to
4 stick around, but we just won't get to scheduling until
5 the end of the call.

6 MS. GERCHIK: Okay, thank you, Your Honor.

7 THE COURT: But if you want to just leave one
8 person on and the rest of you can go back to work,
9 that's fine. Okay?

10 So then let's pivot to talking about Mr.
11 Cuomo's subpoenas as the law firm's Cleary and Vladeck.
12 Ms. Trzaskoma, do you want to take this first or one of
13 your colleagues?

14 MS. TRZASKOMA: Yes. No, Your Honor, Theresa
15 Trzaskoma. So I just want to take a step back on the
16 subpoenas to make clear that we served the subpoenas on
17 the two law firms for the purpose of, not for any
18 improper purpose because we believe that even if state
19 sovereign immunity protects the AG's Office from having
20 to disclose the records we seek, the two non-state
21 entities Cleary and Vladeck are not protected by state
22 sovereign immunity. And contrary to the argument made
23 in counsel's February 20, '24 letter both on behalf of
24 the law firms and the AG's Office, in the context of a
25 discovery subpoena requesting the production of records

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2 for inspection and copying, that just doesn't implicate
3 the kind of state interest that sovereign immunity
4 protects.

5 So we vehemently disagree with their legal
6 arguments, and I think, you know, and including because
7 of one of the cases they cite, the Eastern District
8 decision in Felix made clear that while a state agency
9 might not have to turn over records if those records are
10 available from another custodian, a non-state custodian,
11 those records can be obtained.

12 So - and we're not trying to do this as an end
13 runaround the privilege and other, you know, the
14 privilege and work product objections that the AG's
15 Office has raised and that we are in the course of
16 briefing. Those arguments would be the same as to all
17 the subpoenas and don't need to be relitigated I don't
18 think in the context of the Cleary and Vladeck's
19 subpoenas. So those subpoenas really raise a very
20 discrete legal issue that can and should be briefed
21 promptly and should be we think taken up by the Court at
22 or around the same time as the Court is considering the
23 State, the AG's Office arguments. And to the extent
24 privilege arguments prevail, those would prevail as to
25 Cleary and Vladeck, but we do think that the immunity

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2 question is very different as it relates to the law
3 firms. So we'd like to get a briefing schedule on that.

4 THE COURT: As you see the discrete issue, is
5 it, am I wording it correctly to say that it's whether,
6 assuming sovereign immunity even applies to the OAG,
7 whether the law firms also have the benefit of sovereign
8 immunity?

9 MS. TRZASKOMA: Correct.

10 THE COURT: Okay. So you wouldn't - we don't
11 need to re-brief the issues that are already in the
12 motion to compel as to the OAG.

13 MS. TRZASKOMA: Right. The privilege argument,
14 the privilege issues - the sovereign immunity issue will
15 be, we don't need to re-brief whether the AG has
16 sovereign immunity or whether the documents are
17 protected by any of the privileges invoked by the
18 Attorney General's Office, but we do need to brief this,
19 as I say, quite discrete legal issue of whether if the
20 AG's Office has sovereign immunity from having to comply
21 with a federal discovery subpoena, does that immunity
22 kind of cloak and protect non-state agents of the AG's
23 Office.

24 THE COURT: Okay. And as to why that has to
25 happen now as opposed to waiting until I issue a

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2 decision as to the OAG motion to compel is what?

3 MS. TRZASKOMA: Well, I do worry that we're
4 going to get off schedule. I think that right now the
5 current briefing schedule with the AG's office has us
6 fully, you know, we're not going to be fully briefed
7 until sometime at the end of March. So I do worry that
8 if we don't - if we don't take this up and kind of get
9 it on, you know, if we don't start - sorry, I think
10 early April is the date for when we'll be fully briefed.
11 Yeah, April 3, sorry, I was getting my Bennett
12 deposition and my - anyway, so April 3 is the ending, is
13 when it'll be fully briefed. I just worry that, you
14 know, if the Court were to rule on sovereign immunity, I
15 mean in some ways the Court can just decide, could
16 decide or could punt on the state sovereign immunity
17 argument as it applies to the AG and resolve what we
18 think is a much cleaner issue as to whether Cleary and
19 Vladeck enjoy that immunity. So I think it makes sense
20 for the Court to be thinking about all these issues at
21 the same time.

22 THE COURT: I think there are privilege issues
23 - I think I'll hear this from the law firms in a minute
24 - there are privilege issues as well. So I don't know
25 that is as narrow as I would hope.

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2 MS. TRZASKOMA: No, I will say just so I'm not
3 misspeaking, I think all of the issues, the privilege
4 issues obviously have to be resolved, and I'm not
5 proposing to take us, to take the Cleary and Vladeck
6 issues and separate them from the privilege issues
7 because those are implicated in the Cleary and Vladeck
8 subpoenas as well. So I'm not proposing to bifurcate
9 that in any respect. I'm proposing, and what I think
10 makes sense is for the Court to consider all of them at
11 the same time so that assuming the Court concludes, as
12 we believe it should, that the documents are not
13 attorney-client communications, that they're not, it's
14 not protected by work product, that the question then
15 would be can the Court enforce the subpoenas against
16 either the law firms or the AG's office.

17 THE COURT: Do you think the analysis as to the
18 privilege issues is the same as to the OAG and the law
19 firms or is it a different analysis, different privilege
20 analysis?

21 MS. TRZASKOMA: I believe it's the same, and I,
22 you know, the AG's office and the law firms can correct
23 me if that's wrong, but I believe that the privileges
24 that the law firms are invoking are actually privileges
25 that would belong to, well, they would belong to both,

1 PROCEEDINGS 18
2 that they're principally the same, they're on all fours
3 in terms of the analysis I think.

4 THE COURT: Okay, thank you. All right, Ms.
5 Clark or Ms. Sanchez, would you like to respond for
6 either of your firms, together or separately?

7 MS. SERENA: Your Honor, this is Serena from
8 the AG's Office, and counsel for the firms will be happy
9 to respond, but could I just briefly address something
10 that came up on Friday and it directly bears on the
11 argument that counsel just made about this idea that
12 they can avoid sovereign immunity by subpoenaing the
13 firms because the firms are not state actors, or non-
14 state agents, as I believe Ms. Trzaskoma just said.

15 I did just want to draw the Court's attention
16 to document 200 on the docket which is Cuomo's motion to
17 compel the OAG subpoena. And on page 18, halfway
18 through the page, I'm going to read from that. It says,
19 quote, "The investigators were deputized by the OAG
20 pursuant to Executive Law § 638 which makes clear that
21 the deputies are part of, not counsel to, the OAG. See
22 New York Executive Law 638.

23 And so I just don't understand how they can
24 reconcile that statement in their brief that they
25 submitted to you on Friday with their argument to you

1 PROCEEDINGS 19
2 today that somehow they can subpoena, they can avoid
3 sovereign immunity because the subpoenas to the firms
4 are not subpoenas for state records or not subpoenas to
5 state actors when they've said the exact opposite in
6 their brief filed on Friday. So I just --

7 THE COURT: All right --

8 (interposing)

9 THE COURT: -- but thank you.

10 (interposing)

11 THE COURT: One at a time, one at a time. Are
12 you done, Ms. Longley?

13 MS. LONGLEY: I'm not. I have another just
14 note on the Felix decision which I believe Ms. Trzaskoma
15 left out or changed a word that is crucial when she said
16 that documents could be available from non-state, I
17 think she said custodians, but actually the language of
18 the decision is non-state sources which is, you know,
19 different than the case here because getting documents
20 from these firms would still be getting them from a
21 state source because they are OAG's documents. I think
22 that there's - and you can hear this more from the firms
23 - but this idea that if you can't get something from us
24 because of an immunity or a privilege that we have,
25 which counsel also just agreed, and we agree that the

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2 privilege analysis is the same. We also think the
3 sovereign immunity analysis the same for the subpoenas
4 to the firms and the subpoenas to OAG.

5 And so I just, I think it's really - I'll leave
6 it at that. I think that's the important point, and if
7 you have more specific questions for the firms, they can
8 answer now.

9 THE COURT: Okay. Go ahead, Ms. - Ms.
10 Trzaskoma, I'll let you respond after (indiscernible) if
11 that's okay.

12 MS. TRZASKOMA: Of course.

13 THE COURT: I just want to hear from everybody
14 first. Ms. Clark or Ms. Sanchez.

15 MS. SANCHEZ: This is Sara Sanchez. Yes, Your
16 Honor, it's our position that this motion to compel that
17 defendant Cuomo seeks to bring is entirely unnecessary.
18 It's duplicative. He's seeking from us and from Cleary
19 Gottlieb and from Vladeck the exact same material he has
20 sought from the Office of the Attorney General in the
21 very same investigation conducted for the Offices of the
22 Attorney General by the law firms as special deputies.
23 So that OAG subpoena's obviously subject to a separate
24 motion to compel. And if that motion to compel is
25 successful, the subpoenas against the law firms are

1 PROCEEDINGS 21
2 moot. There's nothing more to obtain from the firms.
3 And if the motion to compel is not successful, then the
4 Court has determined that defendant Cuomo's not entitled
5 to the documents knowing that the law firms are in
6 possession of those underlying materials as agents.

7 So that's why we're asking the Court to stay
8 any separate motion practice as to Cleary Gottlieb and
9 Vladeck. We don't think it's necessary. Your Honor,
10 defendant Cuomo (indiscernible) the documents under the
11 OAG subpoena or he won't.

12 As to this question of the firm's being,
13 somehow being on separate footing when it comes to
14 sovereign immunity, we strongly disagree. We think
15 there's just no basis at all for that. It is, it's
16 unnecessary and it's frivolous to brief that. You know,
17 the firms are protected because the firms were not
18 subpoenaed in their individual capacity but only in
19 their capacity as agents and special deputies to the
20 OAG. So that makes the Attorney General's Office the
21 real party in interest here for purposes of enforcing
22 the subpoena. And, you know, there's just no, there's
23 no daylight, there's no distance between the arguments
24 made by the Office of the Attorney General and the
25 arguments that we would make when it comes to sovereign

1 PROCEEDINGS 22
2 immunity. Our arguments, you know, rise and fall with
3 the OAG arguments.

4 And, you know, compelling the firms to act
5 necessarily requires compelling production of, it's not
6 our documents. It's the Office of the Attorney
7 General's documents that it objects to producing. And
8 it would be, Your Honor, compelling that production,
9 that cost to the Office of the Attorney General, which,
10 again, is the real party in interest here.

11 And, you know, courts have held that compelling
12 counsel to deliver documents that, you know, aren't
13 otherwise discoverable from a client jeopardizes, you
14 know, the policy of promoting open communication between
15 lawyers and their clients, and here the analysis is even
16 more clear because we were not only counsel but we were
17 also appointed as a special deputy. So it's like trying
18 to subpoena an employee of the real party in interest
19 here which courts have also held is improper. So we
20 don't see a basis for any separate briefing or any
21 separate motion practice, Your Honor.

22 THE COURT: Okay, thank you. Ms. Clark, did
23 you want to add anything?

24 MS. CLARK: I think Ms. Sanchez covered it very
25 well. I'd just reiterate that any documents we have we

1 PROCEEDINGS 23
2 have only because we were made special deputies. And
3 then at the outset we agreed with the Office of the
4 Attorney General that any documents we received or
5 generated were the property of the Office of the
6 Attorney General. None of these documents belong to the
7 firm, but I think Ms. Sanchez otherwise covered all the
8 points.

9 THE COURT: And where is that memorialized, Ms.
10 Clark, that any documents (indiscernible) were the
11 property of the OAG? Ms. Clark?

12 (pause in proceeding)

13 THE COURT: Is that (indiscernible) for example
14 or --

15 MS. CLARK: Yeah, it's paragraph 8 of the
16 retainer agreement.

17 THE COURT: Okay. Is that before me yet or
18 not?

19 MS. CLARK: It's attached as an exhibit to our
20 letter of February 20. It's exhibit, oh, yeah, exhibit
21 2.

22 (interposing)

23 MS. CLARK: 2 and 3 I think.

24 MS. LONGLEY: Your Honor, sorry, this is Serena
25 Longley again. Just quickly, it's exhibit 2 are the

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2 appointment letters which also speak to the obligations
3 to keep materials confidential and that all work is done
4 on behalf of the OAG. And then exhibit 3 are the
5 engagements letters with the firms directly that are
6 pursuant to those appointment letters which are exhibit
7 2. So it's in both documents very clearly.

8 THE COURT: All right, thank you. All right,
9 Ms. Trazaskoma, do you want to respond?

10 MS. TRZASKOMA: Thank you, Your Honor. You
11 know, just to address briefly Ms. Longley's first point,
12 I think she's missing an important distinction here
13 which is that we agree that the individual lawyers at
14 Cleary and Vladeck, including Ms. Clark and Mr. Kim,
15 were, in fact, deputized by the Attorney General's
16 Office, but I don't see anything in the records, and I
17 would be shocked if there were, that the Cleary firm is
18 currently or ever was an arm of the Attorney General's
19 Office, nor do I think that happened with Vladeck. So
20 they're, you know, mixing things up.

21 We have subpoenaed the custodians of records
22 which are the two law firms, and the fact that there is
23 a provision in the engagement letters with Ms. Clark and
24 Mr. Kim requiring upon the AG's request that they
25 destroy or return the materials is of no consequence to

1 PROCEEDINGS 25
2 the question of whether Cleary and Vladeck are currently
3 custodians of these records. And I would note that both
4 of those, that paragraph A regarding the retention of
5 records notes in Ms. Clark's, for example, that if the
6 firm is subjected to legal proceedings to compel
7 disclosure, they will promptly notify the AG.

8 So it contemplates that the firms d get
9 subpoenaed for information and that, you know, this is
10 our entire point which is that these law firms did not
11 by virtue of being engaged, by having their lawyers be
12 engaged and deputized become a state entity. They never
13 were and they are not now. And that's our argument. It
14 is - I vehemently disagree that there is any reason to
15 wait on this briefing. It is an important issue. There
16 is - it's an important issue of constitutional law, and
17 if the Court were to take these issues up seriatim, I
18 believe that would just result in wasteful delay that's
19 going to mean we're never going to comply with the
20 Court's discovery schedule.

21 THE COURT: Could you respond though to the
22 point that Ms. Sanchez made which is that if you succeed
23 on the motion to compel as to the OAG, then the
24 subpoenas to the law firms are moot and conversely if
25 the motion to compel as to the OAG is denied and

1 PROCEEDINGS 26
2 sovereign immunity is upheld, then it similarly would be
3 upheld as to the law firms?

4 MS. TRZASKOMA: Well, that's the entire
5 argument. I don't think that if sovereign immunity as
6 to the AG is upheld, it dictates the resolution of
7 whether the law firms enjoy the same immunity. And it
8 is possible, I concede, that the Court could find that
9 the AG is not immune, that the documents are not
10 protected by any privilege, and could direct them to be
11 turned over or that the documents are, in fact,
12 privileged and that regardless of immunity they should
13 be turned over. But, again, I am concerned that that is
14 not going, those issues are not going to be decided and
15 certainly not decided finally. I don't know that the AG
16 is not going to appeal that issue.

17 So I'm just concerned that by delaying briefing
18 on this discrete legal issue, again, you know, the
19 Attorney General is going to be responding to our motion
20 to compel which includes all the privilege arguments,
21 that we're, that it makes sense to delay.

22 THE COURT: All right, well, if it's just a
23 discrete issue, we can keep the briefing relatively
24 streamlined I would think. So if your brief was limited
25 to ten pages, when could you file, when can you file it?

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2 MS. TRZASKOMA: We could file that on March 8.

3 THE COURT: Okay. If - will the law firms be
4 responding together?

5 MS. LONGLEY: Hi, Your Honor, this is Serena
6 Longley from the AG's office. Yes, I think the firms
7 would be an OAG would also move to quash as well as the
8 real party in interest as is contemplated in the portion
9 of the engagement letter that Ms. Trzaskoma read which
10 says that the firms have an obligation to let us know if
11 anyone moves to compel against them so that we can
12 interpose and object. So I think, again, this already
13 unnecessary briefing would also involve a motion from
14 OAG as well as from the firms.

15 THE COURT: Would it be just one motion? You
16 don't need, the OAG and the firms don't need to file two
17 motions, right?

18 MS. LONGLEY: I agree. I think we don't have
19 to file any, but I guess what I would say that makes the
20 point which is that we're all the same, and so it's
21 really all duplicative of the, you know, the motion to
22 compel that was just filed Friday and is going to be
23 briefed.

24 THE COURT: It's not though. There is a
25 separate question as to the law firms, and I'm trying to

1 PROCEEDINGS 28
2 figure out a way so that - I only want to do this once
3 either, I agree with you. So what I'm trying to do is
4 find a way to streamline any briefing as to the law
5 firms, if it's a discrete issue, to get you on track
6 with the OAG briefing, and then we just have one oral
7 argument where everybody shows up and we get this done.
8 So I guess if Mr. Cuomo files his brief, his motion to
9 compel and ten-page brief on March 8, how long do you
10 need for your motion to quash?

11 MS. LONGLEY: Well, Your Honor, first, I do
12 think we could agree to do one joint motion on behalf of
13 the three entities. As far as how long we need, give me
14 just one moment to consult --

15 THE COURT: How about like March 26?

16 MS. LONGLEY: March, sorry, what, 25th?

17 THE COURT: March 26.

18 MS. LONGLEY: 26?

19 THE COURT: Yeah, 2-6.

20 MS. LONGLEY: I think that should be okay.
21 That works.

22 THE COURT: And then, Ms. Trzaskoma, could you
23 get your reply in by April 3?

24 MS. TRZASKOMA: I think we could.

25 THE COURT: Okay. Because that would get us,

1 PROCEEDINGS 29
2 well, I guess are you going to want, the OAG is probably
3 going to want to reply, but maybe a week later for the
4 reply on the cross-motion?

5 MS. LONGLEY: Yes. I think - or maybe - what
6 date does that put us at, sorry?

7 (interposing)

8 MS. LONGLEY: April 10?

9 THE COURT: Yeah.

10 MS. LONGLEY: I think that's fine. And just to
11 be really clear, the only issue for this briefing is
12 going to be are the firms able to invoke the state
13 sovereign immunity defense?

14 THE COURT: Right.

15 MS. LONGLEY: Okay --

16 THE COURT: And I already - the facts are, I
17 don't know that there's really any disputed issues of
18 fact, and I have, you know, I can read engagement
19 letters. So that's why I'm trying to limit it to ten
20 pages because I really think it is the single issue.
21 You don't need to talk about the whole, all the
22 background on sovereign immunity. It's just assuming
23 that there is sovereign immunity, why it applies to the
24 law firms. And, similarly, all the privilege issues
25 have all been set forth in the other round of briefing.

1 PROCEEDINGS 30
2 So it should be pretty narrow, and, frankly, it would be
3 great if we don't even need ten pages, but I'm not going
4 to push you that hard, frankly.

5 MS. TRZASKOMA: Okay.

6 MS. LONGLEY: Your Honor, would there be a
7 limiting on the replies pages?

8 THE COURT: I mean the replies I was thinking
9 five. Can everybody live with that? I mean I'm doing
10 this so that it gets resolved more quickly, and we'll -
11 I want to try, if we get the briefing done by April 10,
12 then we could probably fit in oral argument before the
13 end of April and then, you know, I'm not making any
14 promises or predictions about getting a decision out to
15 you, but it means it's not going to be long after that.
16 So that's why I'm just thinking, I mean I would really
17 love if we could do argument, well, the week of April 22
18 is (indiscernible). But like May 2 we could do
19 argument. (inaudible)

20 MS. TRZASKOMA: Your Honor, this is Theresa
21 Trzaskoma. Five pages for our reply is, makes sense to
22 us. I think that we have I believe April, or May 2 is
23 the date currently set for our client's deposition --

24 THE COURT: Okay.

25 ATTORNEY: It is --

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PROCEEDINGS

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(interposing)

3

MS. TRZASKOMA: But May 3 would work.

4

THE COURT: Okay.

5

MS. TRZASKOMA: May 1 or May 3.

6

THE COURT: May 3.

7

MS. LONGLEY: Your Honor, would it be possible to perhaps do it the following week in May? I just say this because I know several people on our side are affected by like DOE calendar. There's a long break there, and I think a lot of people have, I think it goes into that week.

13

THE COURT: Okay, how about May 9, morning of May 9?

15

MS. TRZASKOMA: I believe that's the deposition of Ms. DesRosiers.

17

THE COURT: Okay, how about the afternoon of May 8?

19

MS. TRZASKOMA: I believe that works for us. This is Theresa Trzaskoma.

21

THE COURT: How about the OAG, May 8?

22

MS. LONGLEY: Yes, that works for all of us here.

24

THE COURT: Okay. And Ms. Sanchez and Ms. Clark?

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PROCEEDINGS

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MS. SANCHEZ: That's fine. Thank you.

3

THE COURT: And, Ms. Schnell, I know you don't necessarily have to say anything (indiscernible) but does that date work for you?

6

MS. SCHNELL: Yes. Yes, Your Honor, thank you.

7

THE COURT: Okay, so let's do 3 o'clock on May 8. All right, very good. And that will be both the OAG motion as well as the law firm motion. Everybody can (indiscernible). Let me just check on thing.

11

(pause in proceeding)

12

THE COURT: Yes, that should be fine on my end. Great, I appreciate that. Thank you, everyone. Okay, so I think those were all the things on my checklist. Ms. Schnell, let me start with you, any other issues you'd like to raise from Ms. Bennett's perspective?

17

MS. SCHNELL: No, we are making progress on various discovery disputes, so I think it would make sense to set another call in perhaps two weeks so we can tee up any, you know, disputes we cannot resolve to get to, for Your Honor before that.

22

THE COURT: Okay. Yeah, Ms. Trzaskoma has raised that as to Ms. Boylan as well. Ms. Trzaskoma, how about you? Aside from setting another conference date, any other issues to raise on behalf of your

1 PROCEEDINGS 33

2 client?

3 MS. TRZASKOMA: No, Your Honor, just to flag,
4 which came up on our last conference, there's an issue
5 related to the confidentiality designations of the
6 videos of Ms. Bennett that we are not able to resolve,
7 that we will be submitting a premotion or, you know, a
8 letter to Your Honor pursuant to the protective order
9 concerning those designations and the sealing of those
10 materials.

11 THE COURT: Understood. Okay. Mr. Morvillo,
12 Ms. Sulkowski, anything on behalf of Ms. DeRosa?

13 MR. MORVILLO: Nothing Your Honor.

14 THE COURT: Okay. Mr. Hamid, on behalf of Ms.
15 DesRosiers?

16 MR. HAMID: No, nothing, Your Honor, thank you.

17 THE COURT: All right, Ms. Rosenberg, on behalf
18 of Ms. Mogul?

19 MS. ROSENBERG: Nothing other than, as Ms.
20 Schnell mentioned, we are working through some discovery
21 issues including relating to the plaintiff's deposition.
22 So if we're able to resolve, we'll inform the Court.

23 THE COURT: All right. If we have our next
24 conference, it's a little bit longer than two weeks, but
25 it's what I can give you, we have our next conference on

1 PROCEEDINGS

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2 March 22, is that enough time to resolve whatever these
3 issues are without impacting any depositions?

4 MR. MORVILLO: Your Honor, this is Ray
5 Morvillo, I think it's probably okay. My concern would
6 be if there isn't, and obviously I have no idea whether
7 there will be, but if there's any issues with production
8 from Ms. Boylan because certainly we're going to want to
9 get documents in for Ms. Bennett's deposition that will
10 be relevant from Ms. Boylan or potentially relevant to
11 the extent that they exist. And the 22nd cuts it pretty
12 close to the deposition which I think is the 28th or the
13 29th.

14 THE COURT: Yeah.

15 MR. MORVILLO: So if you can do earlier in case
16 there's a resolution that needs to be, that would be
17 helpful.

18 THE COURT: Unfortunately, I don't have any
19 time really the week before that, either next week, even
20 next week is not really soon enough. The week of the
21 11th I've already filled.

22 MR. MORVILLO: Well, then I guess the 22nd is
23 good.

24 THE COURT: So, sorry, I guess I'm not really
25 giving you much of a choice.

1 PROCEEDINGS 35
2 MR. MORVILLO: Then I wholeheartedly agree with
3 the 22nd.
4 THE COURT: All right, all right, so why don't
5 I put you down for 10 a.m. on Friday, March 22, and if
6 you can get me any letters as to, letters containing any
7 disputes that I need to address by Friday the 15th. End
8 of the day on Friday the 15th. Okay? Any issues with
9 any of those dates that anyone wants to raise?
10 MS. LONGLEY: Your Honor, hi, sorry, this is
11 Serena from the AG's Office. Just confirming you're not
12 expecting us at that conference on --
13 THE COURT: You don't have to, you're always
14 welcome, but I don't, I think I'm - it may be more Ms.
15 Boylan and Ms. Bennett, but I guess I would also suggest
16 that you look at the letters that are filed on the 15th -
17 -
18 MS. LONGLEY: Of course.
19 THE COURT: -- and anything in there that you
20 want to be heard on that you should probably show up.
21 MS. LONGLEY: Okay, we appreciate that, thank
22 you.
23 THE COURT: Okay. All right, and same for the
24 law firms because we're going to be, your briefing
25 schedule will be percolating by that point. So if you

1 PROCEEDINGS 36
2 don't want to be there either, you don't have to.
3 MS. OEHlke: Your Honor, this is Krista Oehlke
4 from Perry Law on behalf of Ms. Boylan.
5 THE COURT: Yes.
6 MS. OEHlke: Our co-counsel Ms. Gerchik is
7 calling from California. So would it be possible to
8 move the 10 a.m. to perhaps an hour or two later?
9 THE COURT: Let me check, sorry.
10 MS. OEHlke: If not, we can make it work
11 THE COURT: Yeah. Yeah, we could start at 11.
12 I can't really start much later than that. Is that
13 okay?
14 MS. OEHlke: 11 a.m. is great, yeah. That's
15 great, thank you, Your Honor.
16 THE COURT: Yep. Great, so you'll see a post-
17 conference order that has the briefing schedule for the
18 law firm motion as well as the new, the next conference
19 date as well as the date for any letters with the
20 (indiscernible) that you want me to address. Very good,
21 thank you so much, everyone. We'll be adjourned for
22 today. Have a good afternoon.
23 MS. SCHNELL: Thank you, Your Honor.
24 MS. TRZASKOMA: Thank you, Your Honor. Good
25 afternoon.

1 PROCEEDINGS 37
2 ATTORNEYS: Thank you.
3 (Whereupon the matter is adjourned to March 22,
4 2024 at 11 a.m.)
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3 C E R T I F I C A T E
4

5 I, Carole Ludwig, certify that the foregoing
6 transcript of proceedings in the case of BENNETT v.
7 CUOMO, et al., Docket #22cv7846, was prepared using
8 digital transcription software and is a true and
9 accurate record of the proceedings.

10
11
12
13 Signature Carole Ludwig
14 Carole Ludwig
15 Date: March 3, 2024
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